

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL ANDREWS,	)	8:08CV312
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
STATE OF NEBRASKA AND	)	
OMAHA POLICE OFFICER VON	)	
BEHREN, et al.,	)	
	)	
Defendants.	)	

This matter is before the court on Plaintiff's Notice of Appeal. (Filing No. [14](#).) In his Notice of Appeal, Plaintiff argues the merits of his case and seeks to appeal the court's December 9, 2008 Memorandum and Order. (Filing No. [10](#).) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter.<sup>1</sup> Plaintiff's Notice of Appeal is therefore construed as a Motion for Interlocutory Appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such "controlling question of law" is implicated. The court's December 9, 2008 Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion, and an

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<sup>1</sup>Although the court has dismissed some, but not all, claims from this action, a judgment under Federal Rule of Civil Procedure 54(b) is not appropriate here. The dismissed claims and the pending claims have a common factual background and allowing one appeal to go forward while this case progresses is not in the interest of judicial economy.

immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of a final judgment in this matter. For these reasons, Plaintiff's Notice of Appeal, construed as a Motion for Interlocutory Appeal, is denied and Plaintiff's Motion for Leave to Proceed IFP on Appeal (filing no. [16](#)) is denied as moot.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Notice of Appeal (filing no. [14](#)), construed as a Motion for Interlocutory Appeal, is denied.
2. Plaintiff's Motion for Leave to Appeal In Forma Pauperis (filing no. [16](#)) is denied as moot.
3. A separate order will be entered progressing this matter.

February 24, 2009.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge